REGISTERED No. M. 4631.

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. V] Trivandrum, Thursday, 15th December 1960 / 24th Agrahayana 1882 [No. 122.

NOTIFICATION

No. 4813|LA.4|60. *Dated, Trivandrum, 15th December 1960.*

The following Bill together with the Statement of Objects and Reasons and the Financial Memorandum attached to it, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in the Assembly.

D. TIRUMALAI IYENGAR,
Secretary,
Legislative Assembly.

Legislature Secretariat,
Trivandrum.

PRINTED AND PUBLISHED BY THE S. G. P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1960.

THE KERALA ESSENTIAL ARTICLES CONTROL (TEMPORARY POWERS) BILL, 1960

A

BILL

to provide, in the interest of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain articles.

Preamble.—WHEREAS it is expedient to provide for the control of the production, supply and distribution of, and trade and commerce in, certain articles;

BE it enacted in the Eleventh Year of the Republic of India as follows:—

1. *Short title, extent, commencement and duration.*—(1) This Act may be called the Kerala Essential Articles Control (Temporary Powers) Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once and shall remain in force for a period of three years from the date of the commencement of this Act.

(4) Upon the expiry of this Act, the provisions of section 4 of the Interpretation and General Clauses Act, 1125 (Act VII of 1125), shall apply as if this Act had then been repealed by an Act of the Kerala State Legislature.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) "essential article" means any article (not being an essential commodity as defined in the Essential Commodities Act, 1955) which may be declared by the Government by notified order to be an essential article;

(b) "notified order" means an order notified in the Gazette;

(c) "undertaking" means any undertaking by way of any trade or business and includes the occupation of handling, loading or unloading goods in the course of transport.

3. *Powers to control production, supply, distribution, etc., of essential articles.*—(1) If the Government are of opinion that it is necessary or expedient so to do for maintaining or increasing the supplies of any essential article or for securing

their equitable distribution and availability at fair prices, they may, by notified order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licences, permits or otherwise the production or manufacture of any essential article;

(b) for controlling the price at which any essential article may be bought or sold;

(c) for regulating by licences, permits, or otherwise the storage, distribution, transport, disposal, acquisition, use or consumption of any essential article;

(d) for prohibiting the withholding from sale of any essential article ordinarily kept for sale;

(e) for requiring any person holding in stock any essential article to sell the whole or a specified part of the stock to the Government or to an officer or agent of the Government or to such other person or class of persons and in such circumstances as may be specified in the order;

(f) for regulating or prohibiting any class of commercial or financial transactions relating to any essential article, which, in the opinion of the authority making the order, are, or if unregulated are likely to be, detrimental to the public interest;

(g) for collecting any information or statistics with a view to regulating or prohibiting any of the aforesaid matters;

(h) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, any essential article to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto as may be specified in the order;

(i) for regulating the processing of any essential article;

(j) for exercising over the whole or any part of an existing undertaking, such functions of control and subject to such conditions, as may be specified in the order;

(k) for any incidental and supplementary matters including in particular the entering and search of premises, vehicles, vessels and aircraft, the seizure by a person authorised to make such search of any article in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) Where any person sells any essential article in compliance with an order made with reference to clause (e) of

sub-section (2), there shall be paid to him the price therefor, as hereinafter provided:—

(a) where the price can, consistently with the controlled price, if any, fixed under this section, be agreed upon, the agreed price;

(b) where no such agreement can be reached, the price calculated with reference to the controlled price, if any;

(c) where neither clause (a) nor clause (b) applies, the price calculated at the market rate prevailing in the locality at the date of sale.

4. *Delegation of powers.*—The Government may, by notified order, direct that the power to make orders shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such officer or authority subordinate to the Government, as may be specified in the direction.

5. *Effect of orders inconsistent with other enactments.*—Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

6. *Penalties.*—If any person contravenes any order made under section 3,—

(a) he shall be punishable—

(i) in the case of an order made with reference to clause (g) or clause (h) of sub-section (2) of that section, with imprisonment for a term which may extend to one year and shall also be liable to fine, and

(ii) in the case of any other order, with imprisonment for a term which may extend to three years and shall also be liable to fine:

Provided that if the court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a sentence of imprisonment; and

(b) any property in respect of which the order has been contravened or such part thereof as to the court may seem fit shall be forfeited to the Government:

Provided that if the court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property, it may, for reasons to be recorded, refrain from doing so.

7. *Attempt and abetment.*—Any person who attempts to contravene or abets a contravention, of any order made under section 3, shall be deemed to have contravened that order.

8. *False statements.*—If any person,—

(i) when required by any order made under section 3 to make any statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish,

he shall be punishable with imprisonment for a term which may extended to three years, or with fine or with both.

9. *Offences by companies.*—(1) If the person contravening an order made under section 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act bas been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means any body-corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

10. *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (Central Act 45 of 1860).

11. *Presumption as to orders.*—Where an order purports to have been made and signed by an authority in exercise of any power conferred by or under this Act, a court shall presume that such order was so made by that authority within the meaning of the Indian Evidence Act, 1872 (Central Act 1 of 1872).

12. *Burden of proof.*—Where any person is prosecuted for contravening any order made under section 3 which prohibits him from doing an act or being in possession of a thing without lawful authority or without a permit, licence, or other document, the burden of proving that he has such authority, or, as the case may be, the requisite permit, licence, or other document shall be on him.

13. *Protection of action taken under Act.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Government for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

STATEMENT OF OBJECTS AND REASONS

The Government are committing themselves to a huge programme of industrialisation during the Third Five Year Plan. For the due implementation of the Schemes they have in view, it may become necessary to control the production, supply and distribution of, and trade and commerce in, the essential articles required for the purpose and unless the Government have such power of control difficulties are likely to arise. There is at present no law providing for the control of the production, supply and distribution of such essential articles. The Essential Commodities Act, 1955, provides for the control of only articles which are essential commodities within the meaning of that Act. The Essential Articles Control and Requisitioning (Temporary Powers) Act, 1949, which provided for the control of certain other essential articles has expired on 25th January, 1960. Hence it is considered necessary to have an enactment empowering the Government to control the production, supply and distribution of, and trade and commerce in, essential articles. The Bill is intended for this purpose.

This is only an enabling measure. It empowers Government to declare any article, not being an essential commodity within the meaning of the Essential Commodities Act, 1955, to be an "essential article", and to control by notified order the production, supply and distribution of, and trade and commerce in, any such essential article. The provisions of the Bill are mainly based on the provisions of the Essential Commodities Act, 1955, and they are intended to be in force only for a period of three years.

FINANCIAL MEMORANDUM

Clause 3 (1) (e) of the Bill seeks to empower the Government to require any person holding in stock any essential article to sell the whole or a specified part of the stock to the Government. Under clause 3 (3), the Government shall pay

the price of the stock to such person. Therefore, when any article is declared an essential article and the powers under clause 3 (1) (e) are exercised by the Government, expenditure from the Consolidated Fund of the State would be involved on account of the payment of the price of the stock. The expenditure on this account cannot be estimated at present, since it will depend upon the quantity of articles required to be sold to the Government.

K. A. DAMODARA MENON.